

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:
BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,
ASCOT FUND LTD., GABRIEL CAPITAL
CORPORATION,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01182 (SMB)

STIPULATION AND ORDER

The plaintiff, Irving H. Picard, trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities (“BLMIS”) and the chapter 7 estate of Bernard L. Madoff, and Defendants J. Ezra Merkin (“Merkin”), Gabriel Capital Corporation (“GCC”) (the “Merkin Defendants”), and Ralph C. Dawson, as Receiver for Defendant Ascot Partners, L.P. (“Ascot Partners”), and Defendant Ascot Fund Ltd. (“Ascot Fund”) (collectively, the “Defendants”), by and through their respective, undersigned counsel (collectively, the “Parties”), state as follows:

WHEREAS, Ascot Partners and Ascot Fund each maintained an account with BLMIS at certain relevant times prior to or through December 11, 2008, and made deposits to and withdrawals of principal from those accounts as specified herein; and

WHEREAS, in Counts One through Eight and Count Ten of the Trustee's Third Amended Complaint, the Trustee seeks to avoid and recover from Ascot Partners certain withdrawals of principal made from its account held at BLMIS or their value as fraudulent and/or preferential pursuant to, *inter alia*, sections 105(a), 544, 547, 548, 550(a) and 551 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), sections 203(g) and 213(8) of the New York Civil Practice Law & Rules and sections 273 through 279 the New York Debtor and Creditor Law (the "DCL"), as well as section 78fff-2(c)(3) of the Securities Investor Protection Act ("SIPA"); and

WHEREAS, in Count Nine of his Third Amended Complaint, the Trustee seeks the recovery of certain withdrawals of principal made from BLMIS accounts that he alleges were subsequently transferred to Ascot Fund, GCC, and Merkin pursuant to, *inter alia*, DCL section 276-a and 278, Bankruptcy Code sections 105(a) and 550(a) and SIPA section 78fff-2(c)(3);

WHEREAS, the Defendants dispute any and all liability including under Bankruptcy Code section 548(c), 550(a) or any other applicable section of the Bankruptcy Code, any provision of the DCL, or any other statute, rule or regulation, or otherwise; and

WHEREAS, the Defendants moved to dismiss the Third Amended Complaint, which motion was heard on April 30, 2014; and

WHEREAS, on August 12, 2014, the Honorable Stuart Bernstein issued an opinion granting in part and denying in part the motions to dismiss; and

WHEREAS, Judge Bernstein dismissed all claims in Counts One, Three through Eight, Eleven and Twelve of the Third Amended Complaint, and limited the remaining claims to those seeking (i) recovery of Initial Transfers occurring within two years of the commencement of the SIPA liquidation, (ii) recovery of Subsequent Transfers based on the Initial Transfers occurring within two years of the commencement of the SIPA liquidation, and (iii) equitable subordination as an alternative remedy to recovery of monetary damages; and

WHEREAS, the Defendants moved for summary judgment dismissing the remaining counts of the Third Amended Complaint, which motion was heard on June 1, 2016; and

WHEREAS, on January 30, 2017, Judge Bernstein entered a Memorandum Decision Granting in Part and Denying in Part Defendants' Motions for Summary Judgment (the "Decision"), as follows: (1) denied summary judgment as to Count Two, Two-Year Actual Fraudulent Transfers; (2) denied summary judgment as to Count Nine, Subsequent Transfers against the Merkin Defendants and Ascot Fund; (3) granted summary judgment as to Count Nine, Subsequent Transfers against Ascot Partners only; (4) denied summary judgment as to Count Ten, General Partner Liability; and (5) denied summary judgment as to Count Thirteen, Equitable Subordination; and

WHEREAS, the Parties have conferred in an attempt to resolve, where possible, certain differences and disputes between them.

NOW, THEREFORE, the Parties agree and stipulate to the following undisputed facts:

1. Ascot Partners maintained account number 1A0058 with BLMIS from on or about January 4, 1993, through December 11, 2008.
2. Ascot Fund maintained account number 1FN005 with BLMIS from approximately January 1992 through approximately January 2003. On or about January 8, 2003,

Ascot Fund transferred the entire balance held in BLMIS Account 1FN005, \$221,487,622 constituting principal, to Ascot Partners' BLMIS account 1A0058.

3. The account history showing the cash deposits into and cash withdrawals from the Ascot Partners account, excluding transfers between or among the BLMIS accounts of the Defendants, is set forth in the chart below:

BLMIS ACCOUNT NUMBER 1A0058 ASCOT PARTNERS, L.P.			
<u>Date</u>	<u>Description</u>	<u>Amount Deposited</u>	<u>Amount Withdrawn</u>
1/12/1993	Deposit	\$9,075,489	
7/28/1993	Deposit	\$3,000,000	
1/11/1994	Deposit	\$5,000,000	
7/6/1994	Deposit	\$7,000,000	
12/28/1995	Withdrawal		\$6,000,000
1/23/1996	Deposit	\$6,000,000	
4/16/1996	Deposit	\$4,500,000	
7/5/1996	Deposit	\$15,661,000	
7/24/1996	Deposit	\$39,000	
12/30/1996	Withdrawal		\$1,600,000
1/7/1997	Withdrawal		\$9,240,000
1/10/1997	Withdrawal		\$1,000,000
4/8/1997	Deposit	\$8,500,000	
7/8/1997	Deposit	\$1,400,000	
7/10/1997	Deposit	\$1,000,000	
10/8/1997	Withdrawal		\$2,500,000
12/30/1997	Withdrawal		\$6,000,000
1/7/1998	Withdrawal		\$2,500,000
4/13/1998	Deposit	\$26,000,000	
7/8/1998	Deposit	\$10,000,000	
4/5/1999	Deposit	\$18,685,400	
4/12/1999	Deposit	\$11,400,000	
1/10/2000	Deposit	\$700,000	
4/6/2000	Deposit	\$6,175,000	
8/2/2000	Deposit	\$4,200,000	
5/6/2002	Deposit	\$2,000,000	
7/3/2003	Deposit	\$30,000,000	
10/7/2003	Deposit	\$25,000,000	
10/8/2003	Deposit	\$5,000,000	
12/2/2003	Withdrawal		\$5,000,000
12/26/2003	Withdrawal		\$12,000,000

BLMIS ACCOUNT NUMBER 1A0058 ASCOT PARTNERS, L.P.			
<u>Date</u>	<u>Description</u>	<u>Amount Deposited</u>	<u>Amount Withdrawn</u>
1/5/2004	Deposit	\$17,000,000	
8/3/2004	Deposit	\$15,000,000	
1/6/2005	Deposit	\$100,000,000	
4/5/2005	Deposit	\$30,000,000	
10/5/2005	Deposit	\$50,000,000	
12/23/2005	Withdrawal		\$25,000,000
1/6/2006	Withdrawal		\$63,000,000
4/4/2006	Withdrawal		\$76,000,000
7/12/2006	Deposit	\$25,000,000	
12/29/2006	Withdrawal		\$10,000,000
7/6/2007	Deposit	\$80,000,000	
12/31/2007	Withdrawal		\$175,000,000
4/2/2008	Deposit	\$25,000,000	
7/2/2008	Withdrawal		\$50,000,000
10/1/2008	Withdrawal		\$45,000,000
10/9/2008	Deposit	\$10,000,000	

4. The Parties agree that within the two-year period prior to December 11, 2008, the \$280,000,000 in withdrawals from Ascot Partners' account constituted principal.

5. The Parties agree that Ascot Partners' net equity in BLMIS account number 1A0058 as of December 11, 2008 equals \$235,734,338.

6. This Stipulation does not address, and is without prejudice to, any alleged subsequent transfers from Defendants to other parties or any transfers among the Defendants' respective BLMIS accounts.

7. Except as stipulated herein, the Parties reserve all rights, claims, defenses and/or contentions in this adversary proceeding.

8. By executing this Stipulation, the Defendants in no way concede or admit liability under Bankruptcy Code sections 548(c), 550(a) or any other applicable section of the Bankruptcy Code, the DCL, any other statute, rule or regulation or otherwise.

Dated: New York, New York
May 8, 2017

/s/ David J. Sheehan

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*Attorneys for Ralph C. Dawson, Esq., as
Receiver for Defendant Ascot Partners, L.P., and
for Ascot Fund Limited*

SO ORDERED this 8th day of May 2017.

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE